



until we have all of these [PERSTAT] documents in hand. The delay is going to eliminate any opportunity for Defendants' experts to review our damage analysis and any opportunity for Defendants to question our experts about the damage analysis." *See Exhibit C*.

On April 15, after Relators sought Court assistance for the second time on the issue, the Court (J. Jones) ordered the production of the entire universe of PERSTATs (109, 151 pages) with bates numbers.

On April 29, the discovery deadline came and went without Defendant complying with the Court order.

Relators filed yet another motion to compel production, which the Court (both J. Jones and J. Ellis) denied.

Finally, on May 9, Defendants produced the PERSTATS and their bates numbers. Relators' experts immediately began to conduct the needed analysis. The analysis remains a work in progress, but this iteration is close to final. Relators are also producing all related documents (i.e. names drawn in sample, etc) and are making Mr. Wills available for deposition.

In short, Defendant's tardy production caused the delay, which negates any prejudice to Defendant. *See Vitek v. AIG Life Brokerage*, No. 06-cv-615, 2008 WL 4372670 (S.D.Ohio Sept. 22, 2008) (stating that where the plaintiff requested information from defendants during discovery, that he could not determine damages until receipt of that information and that the information was in Defendants' possession, any delay in damages disclosure was justified). Relators' counsel expressly warned , but Defendant dragged its heels, likely hoping never to have to produce the documents that establish the fraudulent overbillings.

### **CONCLUSION**

This Court should deny Defendant's motion to exclude Relators' damages computation.

Date: July 8, 2011

/s/Susan L. Burke  
Susan L. Burke (VA Bar No. 27769)  
Counsel for Relators  
BURKE PLLC  
1000 Potomac Street, N.W.  
Washington, DC 20007-1105  
Telephone: (202) 386-9622  
Facsimile: (202) 232-5513  
[sburke@burkepllc.com](mailto:sburke@burkepllc.com)

Joseph F. Rice  
MOTLEY RICE, LLC  
28 Bridgeside Blvd.  
Mount Pleasant, SC 29464

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of July 2011, we filed Relators' Opposition to Defendants' Motion In Limine to Preclude Relators From Offering Evidence of Damages with the Clerk of Court using the CM/ECF system, which will send a notification to counsel for the United States and counsel for the Defendants.

/s/Susan L. Burke

Susan L. Burke (VA Bar No. 27769)

Counsel for Relators

BURKE PLLC

1000 Potomac Street, N.W.

Washington, DC 20007-1105

Telephone: (202) 386-9622

Facsimile: (202) 232-5513

[sburke@burkepllc.com](mailto:sburke@burkepllc.com)